

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **SEN. TRUDI SCHMIDT**, on March 2, 2005 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Brent R. Cromley, Chairman (D)
Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 68, 2/22/2005; HB 138, 2/22/2005
Executive Action: None.

HEARING ON HB 68**Opening Statement by Sponsor:**

REP. JOAN ANDERSEN (R), HD 59, opened the hearing on **HB 68**, Prohibit daycare providing medicine without parental consent.

This bill resulted from a tragic situation in Montana, where a child in a day care center died after being given Benedryl to make him sleep. She presented a handout from a bill recently passed in Alabama and said that, in 2003, North Carolina passed a law similar to this, as well. Both bills were precipitated by a child's death from being given Benedryl by a day care provider. Day care providers, in Montana, must be absolutely certain they have permission from parents before administering any kind of medication. Permission needs to include doctor's directions or specific directions from the parent. She also handed out an amendment to the bill regarding emergency situations.

EXHIBIT (phs46a01)

EXHIBIT (phs46a02)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.8}

Proponents' Testimony:

Travis Heggem, Laurel, Montana, said his son, Dane Jordan Heggem, died from an overdose of Benedryl January 31, 2003, a week after his first birthday. He was given the drug by a daycare worker because she wanted him to sleep. He said other children have been drugged, or killed, nationwide in states such as North Carolina, Alabama, Florida and Ohio. Along with the confirmed deaths, many others are under investigation. The bill is important. The law provides punishment for giving drugs without permission. He said there is no law in the State of Montana dealing with dispensing over-the-counter drugs. He has been told, by both prosecutors and investigators that a law dealing with the specific crime will make their jobs easier to do. Catch-all phrases like "negligible homicide" give criminals more latitude than a law that specifically states which actions are punishable.

{Tape: 1; Side: A; Approx. Time Counter: 4.8 - 9.5}

Calista Heggem, Laurel, Montana, told the Committee she and her husband were here, today, in support of HB 68. She passed around a picture of their son for the Committee to see. Her son, Dane, a happy, active boy, suddenly died while in daycare on January 31, 2003. An autopsy showed a toxic dose of Benedryl had been

given. She and her husband were investigated, as was his daycare. It became apparent, after the investigation, the daycare had been drugging the children with Benedryl to get them to take naps. She had visited the daycare before ever taking him there. The center was clean and tidy and was run by local women who were also mothers. It has been over two years since Dane's death. The responsible person has not received punishment. A trial is scheduled for August of this year. She hoped a law such as this would help prosecute these cases in the future and serve as a deterrent to others. Since Dane's death, she has heard rumors of this occurring in other daycares within the State.

{Tape: 1; Side: A; Approx. Time Counter: 9.5 - 13.3}

Opponents' Testimony: None.

Informational Testimony:

Kimberly Kradolfer, staff attorney, Department of Public Health and Human Services (DPHHS), said she drafted **REP. ANDERSON'S** amendment and was present to answer questions regarding the amendment.

Questions from Committee Members and Responses:

SEN. COBB questioned whether there was a law defining bodily injury. He said there will be an argument on whether it is serious bodily injury or was it bodily injury. **REP. ANDERSON** said she relied on the bill drafter, Susan Fox, because they had information from the State of North Carolina. Their statutes were somewhat different because of different definitions. **SEN. COBB** wanted to make sure what is serious and what is common law in Montana. He will check on that law in reference to this bill.

{Tape: 1; Side: A; Approx. Time Counter: 13.3 - 15.6}

SEN. WEINBERG asked **REP. ANDERSON** if there was anything on the books now requiring parents, leaving children at daycare, to fill out a short form showing a kid's intolerance to medications or for allergies. **REP. ANDERSON** believed there is, under rules established for daycare facilities. She said this is a case where somebody ignored the rules. **SEN. WEINBERG** asked if it made sense to amend the bill so daycares were compelled to use the form and make sure every parent filled one out. **REP. ANDERSON** did not object to making that more specific. As a daycare director, in California, she required parents to have that kind of information on file with them. She wasn't sure this was a requirement in Montana, but thought it a friendly amendment.

SEN. WEINBERG asked **Becky Fleming-Siebenaler, Program Manager, Day Care Licensing**, to comment. She told him it is a requirement for parents to fill out an emergency consent form (the yellow form). When a child is involved in a day care facility, there are three forms required to be filled out. The emergency consent, which says whether or not the day care provider has parent's permission to administer any types of medication. If medication is requested to be administered, the parent has to supply the name of the medication, the dosage, and the time. That form is required to be updated annually by administrative rule, but she suggests that form be changed and updated as the child's weight changes. There is an immunization form required to be filled out and, if necessary, a pediatric health treatment statement. On the pediatric health statement, as well as the emergency consent form, such things as allergies, and any other special health considerations are asked to be listed by the parents and the child's physician. **SEN. WEINBERG** asked if people were complying with these regulations. **Ms. Siebenaler** told him they do inspections on 20% of the home facilities by statute. The majority of deficiencies they find are in paperwork on the compliance. The yellow form may not be completely filled out. When they see this, on an inspection, they remind the provider it needs to be filled out correctly. If the area where medication administration is not completed, they remind the provider that, until that is completed, they may not administer medications to a child. They are then cited and have to correct that. **SEN. WEINBERG** replied that, had this system been properly used and agreed to, we wouldn't be here today talking about this. **Ms. Siebenaler** said this was correct. In this particular situation, she couldn't speak for the parents whether or not the form was properly filled out. After conferring with the parents, **Ms. Siebenaler** said only infant gas drops were allowed to be administered to this particular child. The provider chose to administer something else.

{Tape: 1; Side: A; Approx. Time Counter: 15.6 - 21.6}

SEN. COBB asked **Mr. Niss** to explain the amendment. **Mr. Niss** said **SEN. COBB'S** question on serious bodily injury falls for the purposes of Section 1. While definitions of both of those terms appear in the MCA, they are in the criminal part of it in title 45 and not in title 52 where codification instructions requires that section 1 be codified. If you wanted to apply the definition of either or both of those terms in title 45 to section 1, you would have to add two definitions in subsection 3, where it says, for purposes of this section. Then we would have to add a couple lines that say bodily injury and serious bodily injury are defined as per 45-1-101 for whatever the section was.

{Tape: 1; Side: A; Approx. Time Counter: 21.6 - 23.8}

Closing by Sponsor:

REP. ANDERSON thanked the Heggems and Becky for being here and said it was brought out this was an illegal act which was done to the child. In other sections of the code, a person could be charged with different kinds of crimes but there was nothing specific for charging this person for a violation of daycare code. She said two House members rose to the floor of the House to state they were aware of situations where Benedryl had been administered to children at daycare to control nap time. She said **SEN. STAPLETON** would carry the bill on the Senate floor.

HEARING ON HB 138

{Tape: 1; Side: A; Approx. Time Counter: 23.8 - 25.9}

Opening Statement by Sponsor:

REP. DON ROBERTS (R), HD 56, opened the hearing on **HB 138**, Require medical examiners board and dentistry board to use screening panels.

REP. ROBERTS explained there is an allied group that helps the Board of Medical Examiners and Board of Dentistry with practitioners who are in need of alcohol and drug control. Sometimes the committees who oversee practitioners, who have entered into these programs, are not closely tied to the Medical and Dental Boards. Often difficult situations have not been reported to the appropriate board and the individual who has been monitored by the rehab program has not been properly corrected. The bill sets up a screening panel to assess and make sure the need for the medical oversight is necessary. It also makes sure rehab individuals report to the Medical and Dental Boards.

{Tape: 1; Side: A; Approx. Time Counter: 25.9 - 28.7}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Michael Ramirez, Clinical Coordinator, Montana Professional Assistance Program, the designated rehabilitation provider for licensed physicians and dentists throughout the State of Montana, under contract with the Board of Medical Examiners and Board of

Dentistry. They are the allied group referred to by **REP.**

ROBERTS. They have been facilitating rehabilitation of impaired providers since 1986. The rate of rehabilitation is between 87 - 92%, depending upon the caseload. From time to time there are periods where relapse occurs. In multiple cases of relapse, the Board is brought in.

{Tape: 1; Side: A; Approx. Time Counter: 28.7 - 32.3}

Lisa Addington, Bureau Chief, Health Care Licensing, Department of Labor and Industry, said both the Board of Medical Examiners and Board of Dentistry are within her bureau. She also had the executive secretary for both boards with her. They were here to answer questions.

{Tape: 1; Side: A; Approx. Time Counter: 32.3 - 33}

Questions from Committee Members and Responses:

SEN. O'NEIL questioned **Mr. Ramirez** about the dentists using drugs illegally. **Mr. Ramirez** answered that about 50% of those referred have problems with alcohol dependency or abuse. Others have problems with prescription drug abuse, writing prescriptions in the name of family members and taking them for their own use.

SEN. O'NEIL asked if any of them are taken to law enforcement for this problem. **Mr. Ramirez** replied that occasionally there is involvement with law enforcement when there is a breach of criminal code. This is approached by rehabilitation of the affected practitioner, not from the criminal justice standpoint. Prosecution has been deferred, subject to full cooperation and compliance with terms of after care monitoring. **SEN. O'NEIL** asked if that meant current statutes were not relevant to their using prescription drugs illegally. **Mr. Ramirez** replied that these are human health problems which are responsive to the interventions his department provides.

{Tape: 1; Side: A; Approx. Time Counter: 33 - 37.1}

SEN. WEINBERG asked **Mr. Ramirez** if he was talking about substance abuse only, or were there other kinds of rehabilitation he is dealing with. **Mr. Ramirez** said there are caseloads of 80 - 85% primary substance abuse, or dependence disorders. Most of the people have psychiatric problems, depression, anxiety, etc. Recently there are problems with sexual contact and boundary violations. **SEN. WEINBERG** asked if boundary violations involved the patient. **Mr. Ramirez** told him, yes. When there is unprofessional conduct, they always involve the licensure board.

SEN. WEINBERG asked if the drug experiences with the practitioners ever involve the patient. **Mr. Ramirez** said yes, in which case it is reported to the medical board. **SEN. WEINBERG** asked if the cases reported to the medical board were also reported to law enforcement. **Mr. Ramirez** said most of the time the doctor is diverting from hospital or clinic supply and taking the controlled substances for his or her use. The practitioner comes to him for help. They are permitted to work with those people and, if there is no professional conduct that has harmed a third party, the board is not involved. **SEN. WEINBERG** wanted to know when he is treating these people are they continuing to work. **Mr. Ramirez** said, no, they withdraw from practice.

{Tape: 1; Side: A; Approx. Time Counter: 37.1 - 48.5}

SEN. WEINBERG told **REP. ROBERTS** he had trouble understanding what was going on. **REP. ROBERTS** said people were falsifying applications from other states regarding drug situations. This makes sure these people realize the Board is interested in their progress. The program has a high success rate because practitioners realize their license is on the line. There has been a gap of communication. Someone might go through six or seven situations with alcohol before the Board learns about it and patients have been affected. He wants to be sure there is a reporting system. The group overseeing this has been working on behalf of the Board, but they have never been appointed by anybody. The Boards represent the citizens of the State of Montana and the rehab group represents the practitioners. The Board should be in alignment so things do not get out of control. He doesn't want the rehab group expanding the definition of addiction. **SEN. WEINBERG** said rehabilitating practitioners was good, but his primary concern was whether patients were being hurt unnecessarily. **REP. ROBERTS** told him he believed that, with the 91% success, the other 9% will do anything, including falsifying urine tests. He thinks the Board should be more involved and, if there is deviation, the Board should know immediately. There should be a screening, by the Board, to make sure the program is implemented and the definition of addiction is not expanded to include things that we don't want them to include.

{Tape: 1; Side: A; Approx. Time Counter: 48.5 - 55.9}

SEN. O'NEIL asked **Mr. Ramirez** about funding for the rehabilitation program. He replied they are funded through a portion of the physician and dentist license fees. They also pay fees for participation in the program. **SEN. O'NEIL** thought it interesting that physicians and dentists go through a rehabilitation program and are not incarcerated, but the general

public goes to the WATCH program. He wondered if it would be possible to put the same number of public into the program as physicians and dentists to benefit the public. **Mr. Rameriz** told him the program was set up as an enlightened self-interest program by physicians and dentists nationally. Physicians and Dentists, nationally, recognized the importance of addressing these problems. This is how the rehab program started.

{Tape: 1; Side: A; Approx. Time Counter: 55.9 - 62.1}

SEN. SCHMIDT asked **REP. ROBERTS** if Montana was just getting on board with this program now. **REP. ROBERTS** said he thought it has been going on many years. This bill makes sure there are checks and balances.

{Tape: 1; Side: A; Approx. Time Counter: 62.1 - 64.4}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 4.9}

Closing by Sponsor:

REP. ROBERTS thanked the Committee and asked for concurrence. He said this a situation implemented by the Boards. The Legislature oversees the Boards. The Boards should be responsible to other entities.

SEN. ESP will carry the bill on the Senate floor.

{Tape: 1; Side: B; Approx. Time Counter: 4.9 - 6.9}

ADJOURNMENT

Adjournment: 4:25 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs46aad0.TIF](#))